

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

To: The Commission

**PETITION FOR AN EXTENSION OF TIME TO COMPLY WITH THE
CAPABILITY REQUIREMENTS OF SECTION 103 OF THE
COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT**

Powertel, Inc. ("Powertel"), by its attorneys and pursuant to Section 107(c) of the Communications Assistance For Law Enforcement Act ("CALEA"),¹ hereby petitions for a two year extension of time, through October 24, 2000, to comply with the assistance capability requirements of Section 103 of CALEA. 47 U.S.C. § 1002. An extension is necessary because CALEA-compliant hardware and software is not currently available and, as such, cannot be implemented within Powertel's networks by the current compliance deadline. In support of this Petition, the following is respectfully shown:

I. INTRODUCTION

Powertel is a broadband PCS and cellular licensee operating wireless telecommunications networks. As a commercial mobile radio service ("CMRS") provider, Powertel is a "telecommunications carrier" as defined in Section 102(8) of CALEA.² As a telecommunications carrier, Powertel is required to meet the Section 103 capability requirements

¹ 47 U.S.C. § 1006(c).

² 47 U.S.C. § 1001(8)(B)(i).

for equipment, services or facilities installed or deployed after January 1, 1995. The deadline for meeting these requirements is October 25, 1998.

Carriers such as Powertel have no choice but to wait. Although the industry has been diligent in the development of a CALEA assistance capability standard, the interim standard has been challenged by both law enforcement and privacy advocates. Law enforcement does not believe that the interim capability standard is adequate, and the privacy advocates believe the interim standard is overreaching.

The FCC will have to resolve the sufficiency of the capability standard. In the meantime, however, without a standard, equipment manufacturers cannot develop and produce CALEA-compliant hardware and software. This means that it is not possible for Powertel and other carriers to meet the assistance capability deadline. For this reason, and the fact that carriers will be in jeopardy of enforcement actions and monetary penalties after October 25, 1998, the Commission must expeditiously grant Powertel the requested extension.

II. COMPLIANCE IS NOT REASONABLY ACHIEVABLE

Section 107(c) of CALEA provides that a telecommunications carrier may petition the Commission for an extension of the deadlines for complying with the Section 103 assistance capability requirements. 47 U.S.C. § 1006(c)(1). After consultation with the Attorney General, the Commission may grant an extension if compliance with the assistance capability requirements is not reasonably achievable through application of technology available within the compliance period. 47 U.S.C. § 1006(c)(2). As shown below, under Section 107(c) of CALEA, Powertel is entitled to an extension of the compliance deadline.

A. The Standard For Compliance With The Capability Requirements Of Section 103 Are Unsettled

On November 20, 1997, an industry standard for compliance with CALEA was adopted. The Federal Bureau of Investigation ("FBI") claims that the standard is deficient because it does not include certain enhanced surveillance functionalities. On March 27, 1998, the FBI challenged the industry standard before the Commission as deficient.³ Additionally, one day prior, privacy advocates filed a deficiency petition claiming that the standard fails to protect the privacy of certain communications.⁴ It now falls to the Commission to establish the necessary standard by rulemaking.⁵

Because of the highly technical nature of the standard, and considerations of adequate assistance to law enforcement versus privacy rights, it is unlikely that the Commission will be able to resolve the issues that have been raised in a time frame that would allow manufacturers and carriers to develop and implement CALEA-compliant technologies. Stated simply, without a final standard there is no basis for determining whether assistance capabilities employed by the manufacturers and carriers are truly CALEA-compliant. By definition then, not only is CALEA-compliance not reasonably achievable by October 25, 1998, for Powertel, compliance by that date is impossible.

³ Joint Petition for Expedited Rulemaking, filed by the Federal Bureau of Investigation and U.S. Department of Justice.

⁴ Petition for Rulemaking under Section 107 and 109 of the Communications Assistance for Law Enforcement Act, filed by the Center for Democracy and Technology.

⁵ 47 U.S.C. § 1006(b).

B. CALEA Compliant Hardware Or Software Will Not Be Available To Powertel By The October 25, 1998 Deadline

On March 30, 1998, AT&T Wireless, Lucent and Ericsson filed a joint petition for extension of the CALEA compliance date (the "Joint Petition"). As demonstrated in the Joint Petition, Lucent and Ericsson will not be able to provide CALEA-compliant technology by the compliance date and for at least two years thereafter.⁶

Powertel's primary equipment supplier is Ericsson. Until Ericsson is able to provide CALEA compliant technology to Powertel, which Ericsson estimates will be at least two years from the current compliance date, Powertel will not be able to fully comply with the Section 103 assistance capability requirements and it is not reasonably achievable for Powertel to do so. Specially, without a final standard, Powertel does not have a benchmark by which to measure compliance. In addition, because of the significant expense, Powertel does not anticipate its equipment vendors will develop additional assistance capabilities until the final standard has been established. As such, because Powertel cannot comply with assistance capability requirements of Section 103 through application of technology available within the compliance period, it is entitled to an extension under Section 107(c) of CALEA.

C. Additional Evaluation Criteria For An Extension Under The Reasonably Achievable Standard

In the Commission's rulemaking notice related to CALEA implementation, the Commission did not propose specific criteria for an evaluation of a Section 107(c) extension request.⁷ However, the Commission did propose to permit carriers to file for extensions under

⁶ Joint Petition at 9.

⁷ Notice of Proposed Rulemaking, CC Docket No. 97-213, released October 10, 1997 at ¶ 50.

Section 107(c) using the specific criteria in Section 109 of CALEA.⁸ 47 U.S.C. § 1008(b)(1).

Although not all of the Section 109 factors are relevant to this Petition,⁹ a discussion of the effects of an extension on: (1) public safety and national security; (2) competition and the provision of new technologies and services; and (3) the nature and cost of the equipment, facility of service at issue, and the financial resources of the telecommunications may assist the Commission in its evaluation this extension request.

1. Public Safety

The public safety and national security will not be compromised by the grant of the instant Petition. Powertel will continue to provide law enforcement -- pursuant to legal authorization -- with the assistance capabilities present in its networks. Therefore, even though Powertel requires an extension of time to obtain the technology to be fully compliant with Section 103 of CALEA, in further support of public safety and national security, Powertel will continue to assist law enforcement within its present network capabilities.

2. Competition

Failure to extend the CALEA deadline will have a substantial adverse impact on competition. Specifically, the compliance deadline relates to facilities, equipment and services constructed or implemented after January 1, 1995. Since most cellular systems were constructed prior to 1995, such systems are not subject to the deadline. However, since all broadband PCS systems were constructed after January 1, 1995, broadband PCS carriers, such as Powertel, may be subject to daily fines of \$10,000 per day per violation because they are unable to comply with

⁸ *Id.*

⁹ The Section 109 factors appear to anticipate that an assistance capability standard has in fact been established.

Section 103 of CALEA. Under these circumstances, cellular carriers would have a significant competitive advantage over PCS carriers.

In addition, if this extension and others like it are not granted, all carriers will be unable to introduce new services, or undertake upgrades of existing networks. Specifically, pursuant to CALEA, new services and major upgrades to networks must be CALEA compliant. This means that, absent extensions for compliance, competition in the telecommunications marketplace will be halted because of the inability of manufacturers and carriers to comply with the CALEA capacity requirements. Such a significant impact on competition mandates that the requested extension be granted.

3. Financial Resources Of The Carrier

With respect to the nature and the cost of the equipment, facility or services at issue and the financial resources of the telecommunications carrier, until a CALEA standard is adopted, Ericsson cannot develop CALEA-compliant technology. This means that no amount of money could bring the Powertel networks into compliance by the October 25, 1998 deadline.

III. THE COMMISSION MUST EXPRESSLY TOLL ACTIONS AND PENALTIES DURING THE PENDANCY OF THIS EXTENSION REQUEST

Without a standard, by definition, no system will be capable of being CALEA compliant. However, the absence of a final Section 103 assistance capability standard does not alone relieve telecommunications carriers of their obligations under CALEA. This fact exposes carriers to significant risk because Section 108 of CALEA permits the Attorney General to seek an order in the Federal District Court to enforce CALEA and authorizes penalties of \$10,000 per day, per violation. See 47 U.S.C. § 1007 and 18 U.S.C. § 2522. Because Powertel could be subject to enforcement actions and significant daily monetary forfeitures, for the reasons stated herein, Powertel expressly requests that the Commission toll CALEA compliance during the pendancy

of this petition in the event the Commission's evaluation of this request extends beyond the October 25, 1998 deadline.

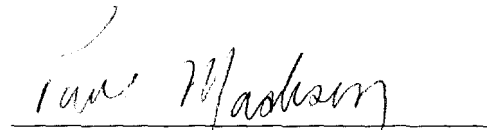
IV. CONCLUSION

Given the lack of a final CALEA standard and the unavailability of CALEA-compliant technology, meeting the Section 103 assistance capability requirements is not reasonably achievable for Powertel. For this reason and the other reasons stated in this Petition, Powertel respectfully requests an extension of the CALEA compliance date to October 24, 2000, effective on or before October 25, 1998.

Respectfully submitted,

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Date: April 23, 1998